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June 8, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Dominion Energy South Carolina, Incorporated's Establishment of a Solar Choice Metering Tariff Pursuant to S.C. Code Ann. Section 58-40-20
Docket No. 2020-229-E

Dear Ms. Boyd:

Enclosed for filing on behalf of Dominion Energy South Carolina, Inc. is a Petition for Rehearing and/or Reconsideration and for Clarification ("Petition") in the above-captioned matter.

By copy of this letter we are also providing a copy of the Petition to the parties of record and enclose a certificate of service to that effect.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Matthew W. Gissendanner

MWG/kms
Enclosure
cc: Tyler Fitch, Esquire
Peter Ledford, Esquire
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Kate L. Mixson, Esquire
Andrew M. Bateman, Esquire
David L. Neal, Esquire
(all via electronic mail only w/enclosures)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2020-229-E

Dominion Energy South Carolina, Incorporated's Establishment of a Solar Choice Metering Tariff Pursuant to S.C. Code Ann. Section 58-40-20	**DOMINION ENERGY SOUTH CAROLINA INC.'S PETITION FOR REHEARING AND/OR RECONSIDERATION AND FOR CLARIFICATION**

INTRODUCTION

Pursuant to Ann. § 58-27-2150 and S.C. Code Ann. Regs. 103-825, Dominion Energy South Carolina, Inc. ("DESC") respectfully petitions the Public Service Commission of South Carolina ("Commission") to rehear and/or reconsider its findings and conclusions in Order No. 2021-391 (the "Order"), and, alternatively to provide clarification for certain findings.

DESC files this petition for rehearing and/or reconsideration and for clarification (the "Petition") of the following seven issues:

i. The Order's prohibition on recovery of avoided cost credits under S.C. Code Ann. § 58-27-865 (the "Fuel Clause") violated South Carolina law and PURPA principles relating to energy supplied by Qualifying Facilities;

ii. The Order did not make clear that renewable energy certificates ("RECs") transfer with the net exported energy supplied by the rooftop solar customers to a utility;

iii. The Order improperly characterized elimination of the cost shift as DESC recovering lost revenue and fails to accurately represent DESC's measurement of the same;

iv. The Order erred in finding that the Subscription Fee and Basic Facilities Charge (A) are unsupported by the record and (B) penalize customers for behind the meter consumption in violation of Act 62;

v. The Order applied the preponderance of the evidence standard unevenly;

vi. The Order erred in its interpretation of the requirement to eliminate "any" cost shift to the greatest extent practicable; and

vii. The Order relied heavily upon certain "benefits" of solar that have not been quantified or adopted by this Commission.

BACKGROUND

The General Assembly, through S.C. Act No. 62 of 2019 ("Act 62"), directed the Commission to address all renewable energy issues—including net energy metering ("NEM") programs—"in a fair and balanced manner." S.C. Code Ann. § 58-41-05. With respect to renewable energy issues related to solar generation and distributed energy resources, the General Assembly's specific intent was to:

> (1) build upon the successful deployment of solar generating capacity through Act 236 of 2014 to continue enabling market-driven, private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources;
>
> (2) avoid disruption to the growing market for customer-scale distributed energy resources; and
>
> (3) require the commission to establish solar choice metering requirements that fairly allocate costs and benefits to eliminate any cost shift or subsidization associated with net metering to the greatest extent practicable.

S.C. Code Ann. § 58-40-20(A).

As detailed in clause (3) above, Act 62 requires the adoption of an NEM successor program known as "Solar Choice Metering."

Although Act 62 contained this specific directive for the Commission to establish new NEM programs, Act 62 also directed the Commission to undertake a review of the current NEM

programs (the "Current NEM Programs"). To fulfill that directive, the Commission established Docket No. 2019-182-E (the "Generic Docket") to investigate the Current NEM Programs. The Generic Docket required a critical examination, through a contested proceeding, of the Current NEM Programs and corresponding methodology such that the Commission and the various parties could gather NEM best practices from around the country and "lessons learned" from the Current NEM Programs to leverage when developing Act 62's next generation of NEM—the Solar Choice Program. The analysis presented in the contested Generic Docket is important because Act 62 contains new mandates related to NEM that were not previously required in South Carolina—such as eliminating cost shift and subsidization "to the greatest extent practicable" and a consideration of "time-variant rate schedules." S.C. Code Ann. § 58-40-20(G)(1); S.C. Code Ann. § 58-40-20(F)(3)(b). The investigation conducted in the Generic Docket and the conclusions derived therein provide a toolset with which to address these new mandates. However, in addition to the Generic Docket investigation, the General Assembly continued further and set forth specific requirements for Solar Choice, compliance with which ensures fulfillment of the statutory intent. The Commission, consistent with the requirements of Act 62, established separate, utility-specific dockets to hear testimony, consider utility-sponsored proposals, and establish solar choice metering tariffs for applications received after May 31, 2021, consistent with the mandates of Sections (F), (G), and (H) of S.C. Code Ann. § 58-40-20. For example, Section (F)(3) outlines specific items which the Commission must consider in this docket:

> (3) A solar choice metering tariff shall include a methodology to compensate customer-generators for the benefits provided by their generation to the power system. In determining the appropriate billing mechanism and energy measurement interval, the commission shall consider:
>
> > (a) current metering capability and the cost of upgrading hardware and billing systems to accomplish the provisions of the tariff;

> (b) the interaction of the tariff with time-variant rate schedules available to customer-generators and whether different measurement intervals are justified for customer-generators taking service on a time-variant rate schedule;
>
> (c) whether additional mitigation measures are warranted to transition existing customer-generators; and
>
> (d) any other information the commission deems relevant.

S.C. Code Ann. § 58-40-20(G) requires the Commission, in establishing a successor solar choice metering tariff, to:

> (1) eliminate any cost shift to the greatest extent practicable on customers who do not have customer-sited generation while also ensuring access to customer-generator options for customers who choose to enroll in customer-generator programs; and
>
> (2) permit solar choice customer-generators to use customer-generated energy behind the meter without penalty.

Finally, S.C. Code Ann. § 58-40-20(H) directs the Commission to "establish a minimum guaranteed number of years to which solar choice metering customers are entitled" to take service under the Solar Choice Tariffs.

In order to hear testimony, receive documentary evidence, and consider the NEM tariffs proposed by DESC in this docket (collectively, the "Solar Choice Tariffs"), the Commission convened a virtual hearing on this matter on February 23, 2021, in the hearing room of the Commission with the Honorable Justin T. Williams presiding as Chairman. The hearing concluded on March 2, 2021, and the Commission issued the Order on May 29, 2021.

STANDARD OF REVIEW

S.C. Code Ann. § 58-27-2150 allows a party to file a petition for rehearing and/or reconsideration in respect to any "matter determined in such proceedings and specified in the application for rehearing, and the Commission may, in case it appears to be proper, grant and hold

such rehearing." The Commission's review of the Petition is governed by S.C. Code Ann. Reg. 103-825(4), which requires the Petition to:

> [s]et forth clearly and concisely:
>
> (a) The factual and legal issues forming the basis for the petition;
>
> (b) The alleged error or errors in the Commission order;
>
> (c) The statutory provision or other authority upon which the petition is based.

A petition for rehearing and/or reconsideration allows the Commission to identify and correct specific errors and omissions in its prior rulings where there are errors that need to be corrected or omissions that need to be addressed. *See In re: South Carolina Electric & Gas Company*, Order No. 2013-05 (Feb. 14, 2013). In issuing its orders, the Commission has a heightened duty to make "explicit findings of fact which allow meaningful appellate review of these complex issues." *See Patton v. South Carolina Public Service Com'n*, 312 S.E.2d 257 (1984); *Seabrook Island Property Owners Assn v. South Carolina Public Service Comm'n*, 401 S.E.2d 672, at 674 (1991). Although the South Carolina Supreme Court uses a deferential standard when reviewing a Commission decision, the decision must be based on substantial evidence on the whole record. *See Kiawah Prop. Owners Grp. v. The Pub. Serv. Comm'n of S.C.*, 593 S.E.2d 148 (2004).

ARGUMENTS

I. The Order's prohibition on recovery of avoided cost credits under the Fuel Clause violated South Carolina law and PURPA principles relating to energy supplied by Qualifying Facilities.

As explained below, it is axiomatic that DESC is permitted to recover avoided costs paid to rooftop solar customers via the Fuel Clause. However, the Order appears to signal that DESC

will be unable to recover certain of these costs in future fuel proceedings.[1] Specifically, the Order states that:

> The Commission finds that DESC's proposal to recover avoided cost credits to solar customers as 'purchased power fuel expenses' under the fuel clause, even for solar exports it sells at retail rate, would allow the utility to more than double recover for its costs; it is reasonable to prohibit the utility from recovering avoided cost credits as purchased power fuel expenses for any solar exports sold at the retail rate.
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> Order at 25.

As an initial matter, it is unclear how this finding will impact DESC's cost recovery going forward given that there is no Ordering Paragraph that relates to this finding of fact.[2] Regardless, the prohibition on recovery of these costs violates South Carolina law and well-settled principles of PURPA.

A. PURPA.

It is fundamental that utilities must purchase power from renewable generators that obtain qualifying facility status under PURPA (each a "QF") at the utility's applicable avoided cost rates. *See, e.g.*, 16 U.S.C. § 824a-3; 18 C.F.R. § 292.303. These QFs must undergo a filing process with the FERC to obtain such QF status; provided, however, that the FERC exempted QFs smaller than 1 MW from such filing process. *See* 18 C.F.R. § 131.80; *Revisions to Form, Procedures, & Criteria for Certification of Qualifying Facility Status for A Small Power Prod. or Cogeneration Facility*, 130 FERC ¶ 61,214, at P 34 (2010) ("Order No. 732"). Rather, the certification of these smaller generators as QFs is presumed without filing with the FERC. *See id*. The FERC specifically contemplated this exemption as benefitting residential and commercial and industrial

[1] The Order prohibits DESC from recovering only those avoided cost credits paid for power that DESC subsequently sells at the retail rate.
[2] This language appears in Finding of Fact 8.

rooftop solar customers in Order No. 732, and noted that "for facilities that are comparatively small, such as solar generation facilities installed at residences or other relatively small electric consumers such as retail stores, hospitals, or schools . . . there may not be as compelling a need for filings with the Commission for QF status." Order No. 732 at P 34 and 35. As such, it is well-settled that the rooftop solar customers—whether residential or commercial and industrial—are presumed to be QFs under PURPA. The primary impact of this characterization of rooftop customers as QFs is that DESC must take the renewable power generated by these rooftop solar customers via PURPA's must-take obligation. *See* 18 C.F.R. § 292.303. PURPA mandates that utilities be able to recover the costs associated with the energy delivered to it from a QF.[3] *See* 16 U.S.C. § 824a-3. Regarding NEM programs specifically, the FERC has opined that any decision to implement net billing arrangements should be left to state regulatory authorities, but that once implemented, any "net-sales" arising from those customer-generators over an applicable billing period "must be at an avoided cost rate consistent with PURPA and [the FERC's] regulations implementing PURPA." *Midamerican Energy Co.*, 94 FERC ¶ 61,340, at 62,263 (2001).

B. South Carolina Law.

South Carolina, via the General Assembly, exercised its authority to implement NEM via the Solar Choice Program under Act 62. S.C. Code Ann. § 58-40-20(F)(1). This Solar Choice Program mirrors and builds upon the must-take obligation under PURPA. The Commission ordered that net excess energy generated by these customer-generator QFs and delivered to DESC shall be valued at avoided cost rates. Order at 24. In fact, these avoided cost rates are the same rates paid to utility-scale QF generators under PURPA. Tr. 235.7 – 235.11. Importantly, the Fuel

[3] 16 U.S.C. § 824a-3 mandates that utilities are able to recover "all prudently incurred costs associated with the purchase" of power from QFs.

Clause permits DESC to recover avoided and incremental cost associated with the Solar Choice Program. S.C. Code Ann. § 58-27-865(A)(1). Specifically, the Fuel Clause states that:

> The incremental and avoided costs of distributed energy resource programs **and net metering** as authorized and approved under Chapters 39 and 40, Title 58 shall be allocated and recovered from customers under a separate distributed energy component of the overall fuel factor that shall be allocated and recovered based on the same method that is used by the utility to allocate and recover variable environmental costs.
>
> S.C. Code Ann. § 58-27-865(A)(1). (emphasis added).

The Fuel Clause specifies other costs which DESC is permitted to collect, including "avoided costs under the Public Utility Regulatory Policy Act of 1978, also known as PURPA." S.C. Code Ann. § 58-27-865(A)(2)(c). Therefore, not only does South Carolina law mirror PURPA's must take obligation, but it also specifically and expressly permits DESC to recover costs for excess energy under NEM programs. Furthermore, DESC does not "double recover.'' DESC serves its customers by building and self-generating electricity and/or purchasing electricity at wholesale. This energy is provided to retail customers at retail rates. Whether DESC purchases power from a utility-scale solar QF, a residential Solar Choice QF, a non-residential Solar Choice QF, or another utility, those transactions are all properly accounted for as wholesale, or sale-for-resale, purchases that avoid the next incremental unit of generation and are properly recoverable under the Fuel Clause. Under NEM, DESC simply pays the QF the costs it would incur generating power itself or purchasing it from another source, but for the purchase from the QF. DESC then supplies such power (self-generated or purchased on the wholesale market) to its customers under residential rates.

C. Request for relief.

The Order's mandate that DESC be prohibited from recovering avoided costs for energy that it subsequently sells at the retail rate as written cannot readily be squared with federal and state law. Under a literal interpretation of the Commission's finding, DESC would also be unable

to recover avoided costs paid to utility-scale QF generators if DESC subsequently sold such power to its retail customers. Because there is no corresponding Ordering Paragraph, this finding standing alone without further context creates confusion, and creates the potential for the erroneous result mentioned above that would violate federal and state laws and regulations. As such, DESC respectfully requests that the Commission reconsider and clarify this finding in accordance with the well-settled principles of federal and state laws and regulations. Likewise, DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

II. The Order did not make clear that DESC owns the RECs to the power it must take from rooftop solar customers.

The Order provides, "[t]he customer-generator shall have all rights and title to own and transfer RECs attributable to their generation." Order at 29. Although this statement is an accurate statement of principle regarding RECs generally, DESC requests additional clarification from the Commission to remove any remaining confusion regarding the treatment of RECs associated with power DESC must take from rooftop customers.

A. Overview regarding the treatment of RECs.

As an initial matter, DESC Witness Kassis testified that any RECs attributable to customer-generation for power consumed behind-the-meter should inure to the customer. Tr. 51.8 – 51.10. However, this is not the case for RECs associated with power delivered to DESC. As DESC made clear in the testimony and at hearing, DESC's obligation to take power from these rooftop solar customers is driven primarily by one factor—the customer's supply of renewable energy or "green" power. Tr. 51.15. DESC Witness Kassis noted explained at hearing that DESC must accept this power which necessarily includes these RECs. Tr. 53.12 – 53.14. This delivery of green power is the basis for PURPA and Solar Choice under Act 62.

However, Alder Witness Zimmerman alleged that certain commercial and industrial customers have corporate sustainability goals that necessitate those customers maintaining title to RECs associated with their generation. Tr. 667.1 – 667.6. Alder Witness Zimmerman further clarified that, despite his years as an installer in the commercial rooftop solar industry, he did not understand the mechanics or treatment of RECs.[4] Tr. 702.9 – 702.12. It is unclear whether Alder Witness Zimmerman is requesting that Alder's customers retain RECs for energy they generate and consume (even if under a banking mechanism) or if he is also requesting RECs for energy that Alder's customers generate and then put to DESC. If it is the latter—and the Commission has granted such request—then it would result in those non-residential customers effectively putting "brown," non-renewable power to DESC. This result would violate the applicable tenets of federal and state law.

B. Request for relief

Although the customer-generator shall have all rights and title to own and transfer RECs attributable to their generation, DESC respectfully requests that the Commission clarify the next step—which is that the RECs associated with net excess energy that the customer-generator delivers to DESC will transfer with the energy to DESC. DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

III. The Order improperly characterized elimination of the cost shift as DESC recovering lost revenue and fails to accurately represent DESC's measurement of the same.

DESC presented extensive testimony which proved that the reduction of the cost shift in the Solar Choice Tariffs simply allocate the same revenue in a manner that more closely aligns

[4] Alder Witness Zimmerman explained that "[w]ith regard to REC ownership and consumption, green power – once again, I don't understand the significance of that definition. If you would like to sit here and tell me I'm an idiot, go right ahead." Tr. 702.9 – 702.12.

with DESC's cost to serve NEM customers. Tr. 17.4 – 17.6; Tr. 354.10; Tr. 235 – 236. This is primarily achieved by accounting for the cost to serve customers prior to the installation of solar versus savings after the installation of solar. Tr. 284.8 – 284.10. However, the Order states that any reduction in the cost shift results in DESC "collect[ing] lost revenues from current NEM customers." Order at 63. The Order further opines that "[NEM] customer bill savings are not an appropriate metric by which to exclusively measure potential cost shift." Order at 16. The Order erred in making these findings and they are not supported by the record before the Commission.

A. Cost shift as Lost Revenue.

Act 62 calls upon DESC to "fairly allocate costs and benefits to eliminate any cost shift or subsidization associated with net metering to the greatest extent practicable." S.C. Code Ann. § 58-40-20(A)(3). DESC made clear throughout its testimony and expert analyses presented in this docket that the cost shift under existing NEM programs results in non-NEM customers—not DESC—subsidizing NEM programs to account for the deficit between what NEM customers pay for electricity and the cost to serve those customers. Tr. 170.18 – 171.1. DESC answered the call of Act 62 by first measuring cost shift under existing NEM programs and then designing rates that more closely aligned with DESC's cost to serve NEM customers to reduce such cost shift. Tr. 311.16 – 312.4. This re-allocation of costs and benefits is designed to reduce the burden on non-NEM customers. Inaccurately characterizing cost shift as lost revenue to prohibit DESC from fulfilling the statutory mandate of Act 62 does not adequately account for the very consideration Act 62 required in the Generic Docket and does a dis-service to the approximately 740,000 non-NEM customers in violation of Act 62.[5]

[5] Act 62's concern for non-NEM customers was made evident not only by the cost-shift language relevant to this docket, but also by the requirement in the Generic Docket arising from 58-40-20(D)(2), which required an examination of the rate of return provided by NEM customers when compared to non-NEM customers.

B. Measurement of Cost shift.

Measuring cost shift based upon the bill savings experienced by customers once they install NEM and comparing that to the benefits they provide is appropriate. Specifically, the bill savings of NEM customers under existing programs represent the avoidance of certain fixed costs embedded in the volumetric rates that are still properly attributable to those customers. Tr. 229.12. However, such fixed costs would have to be specifically identified and quantified to the same degree required in a rate proceeding. As described above, although the customer experiences those bill savings, DESC does not experience a similar decrease in the cost to serve those NEM customers and must recoup those cost from non-NEM customers—the very definition of a cost shift. Tr. 229.3 – 229.7. Although the Order did not provide a standard by which this cost shift should be measured, it did suggest that if DESC conducted a cost of service study, it "could have compared the cost to serve solar customers against the amount DESC receives from solar customers as relevant evidence relating to potential cost shifts." Order at 64. To be clear, this is the approach DESC utilized to measure the cost shift.

DESC Witness Everett explains in her direct testimony:

> As stated above, I had already calculated the NEM customer's average bill before installing a system as $1,660 and $4,120 for residential and small general service customers, respectively. **This was the best representation of the cost to serve the NEM customer prior to installation of the system**. Since these customers are installing generation that offsets use, it is then appropriate to subtract the avoided costs saved by their self-generation from these cost of service measurements.
>
> (emphasis added)

Utilizing these bill metrics as a baseline cost to serve is appropriate because DESC's Commission-approved rates are cost-based. Tr. 541.9. By using the bills prior to installing NEM as the baseline cost to serve metric, the only way to accurately compare that amount "against the amount the

Company receives from solar customers"—as expressly suggested by the Commission—is to evaluate the bills of these customers after the installation of solar. Order at 64. That gap is the bill savings experienced by the customer, which were the precise numbers used by DESC to evaluate the cost shift. Tr. 229.1 – 229.7. The direct benefits of the customer's generation—which are set to equal the avoided costs from DESC's cost of service studies—are memorialized annually in DESC's fuel proceeding and subtracted from these bill savings to quantify the cost shift. Therefore, as discussed below, those baseline numbers actually derive from a cost of service study—contrary to the Order's assertion—and that cost of service study that was utilized to develop rates in this proceeding was the same cost of service study utilized in DESC's last rate case in Docket No. 2020-125-E.[6]

C. Request for relief.

The Order appears to mischaracterize the cost shift as lost revenue and misinterprets the way in which DESC measured the cost shift—particularly given that DESC's measurement was in-line with the Commission's recommendation in the Order. Given the importance of this issue and this finding's adverse impact upon DESC's non-NEM customers, DESC respectfully requests that the Commission reconsider this finding in accordance with the clarifications provided above. Likewise, DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

IV. The Order erred in finding that the Subscription Fee and Basic Facilities Charge (i) are unsupported by the record and (ii) penalize customers for behind the meter consumption in violation of Act 62.

[6] DESC maintains the position that Act 62 did not require a cost of service study in this docket, and only required a cost of service study to be submitted in the generic docket, Docket No. 2019-182-E.

DESC provided the Commission with a robust record demonstrating that the Subscription Charge and the Basic Facilities Charge (the "BFC") are not tied to behind the meter consumption. Tr. 236.16 – 237.6; Tr. 478 – 479. Rather, they are designed to collect certain costs to serve NEM customers that DESC incurs on its system—including transmission and distribution costs. *Id*. However, the Order erroneously held that these charges "effectively penalize solar customers for their behind-the-meter usage in violation of Act 62" and that DESC's proposed values for each are unsupported by the record. Order at 64.

A. Act 62's Penalty Language.

Act 62 requires the Solar Choice Tariffs to "permit solar choice customer-generators to use customer-generated energy behind the meter without penalty." S.C. Code Ann. § 58-40-20(G)(2) (emphasis added). The Solar Choice Tariffs adhere to this requirement by maintaining the same 1:1 offset for behind-the-meter consumption experienced by customers under the existing NEM programs. Tr. 17.6. This means that if a customer consumes energy behind-the-meter, that energy offsets the power it would have otherwise purchased at the retail rate from DESC. To be clear, the Subscription Fee and the BFC do not vary based upon the amount of energy consumed behind-the-meter and, as described by DESC Witness Everett, do not attempt in any way to capture any costs other than the cost to serve these customers. Tr. 236.12 – 236.17. In this way, these charges are designed to achieve a different goal within Act 62—elimination of the cost shift—specifically, cost shift associated with transmission and distribution costs attributable to customer-generators. Tr. 23.21 – 23.23. However, the Order takes into consideration extraneous matters—which in no way relate to behind-the-meter consumption—to construe these charges as penalties. For example, the Order states that:

> A solar tariff improperly penalizes behind the meter consumption if a customer-generator would pay more under the tariff than if they did not have solar, when

> considering the non-bypassable charges and fees on their utility bills and after accounting for the self-consumption of energy used behind the meter.
>
> Order at 65.

This concept does not appear anywhere in Act 62. Regardless, these NEM customers would not pay more simply because they have solar. Rather, NEM customers would pay the Subscription Fee and BFC to fairly account for the cost to serve these customers—a fundamental principle of rate design. Should such a hypothetical situation arise where a customer pays more simply for installing solar—which does not occur under the Solar Choice Tariffs proposed by DESC—per Act 62 there would need to be an analysis of the cost and benefits of the program. If the customer-generator was able to use the generation it produces behind-the-meter without penalty then the program would have to be further analyzed to determine whether it accurately represents the customer generators use of transmission and distribution facilities and whether the customer generator is receiving the proper value for the net excess energy it is putting to the utility. But, in no case can it simply be assumed customers are penalized for using the energy they generate behind-the-meter.

In further attempting to define "penalty" outside of the clear bounds provided by Act 62, the Order notes that:

> DESC's proposed Solar Choice Metering Tariff will substantially reduce customer bill savings, significantly increase payback periods, remove rooftop solar as an economically viable option for most of DESC's residential customers, and disrupt the solar market in South Carolina in contravention of Act 62.
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> Order at 25.

Again, nowhere does Act 62 tie "penalty" to bill savings, payback periods, economic viability, or disruption of the market. Rather, it only mentions "penalty" in one context—behind-the-meter consumption. S.C. Code Ann. § 58-40-20(G)(2). DESC, in accordance with Act 62, left the 1:1 offset unchanged from Current NEM Programs and customers can consume behind-the-meter without worry of a "consumption tax." However, the Order utilizes concepts unrelated to behind-

the-meter consumption to characterize these charges as a penalty and justify its modification of the same. As such, the Order errs in finding a connection between the Subscription Fee, the BFC, and behind the meter consumption. As stated above, these charges are in no way correlated with a customer's behind the meter consumption but rather are designed to collect the costs the customer must rightfully pay for the use of DESC's system, regardless of generation that never reaches the grid.

B. Calculation of the Subscription Fee and BFC.

Contrary to the Order's assertion, the values of the Subscription Fee and the BFC were calculated by relying on DESC's most recent cost of service study that was presented to this Commission in Docket No. 2020-125-E.[7] Tr. 239.9. As described at length in testimony and during the hearing, this cost of service study was used to design all of the rates within the Solar Choice Tariffs, and DESC presented comprehensive quantitative analyses that justified the values developed from this study for the Subscription Fee and the BFC. *Id*; Tr. 229 – 230. Specifically, DESC Witness Everett based the Subscription Fee on the size the customer's installed system to reflect the expected capacity needed by that customer to both serve their total consumption capacity needs and accommodate the expected exporting capacity needed by the customer for generation not used behind the meter. Tr. 236.22 – 237.2. The fee is structured to ensure a customer pays for those capacity needs by extracting these capacity costs from the volumetric rate and charging them separated based on the driver of those costs by the individual customer generator. Tr. 230.11 – 230.24. It is important to remember that the Subscription Fee results in lower volumetric prices because the costs of transmission and distribution costs that are the basis of the

[7] DESC maintains the position that Act 62 did not require a cost of service study in this docket, and only required a cost of service study to be submitted in the generic docket, Docket No. 2019-182-E.

subscription fee are no longer in the volumetric rate. Tr. 229.12 – 229.13. Furthermore, DESC Witness Everett provided the Commission with the exact causal link that justifies a scaled-up Subscription Fee for larger systems given that "transmission and distribution costs are driven by the customer's demands on the DESC system." Tr. 239.21. As for the BFC, it is identical to the BFC proposed in DESC's current rate case and covers customer related costs identified therein. Tr. 239.15. No other party in this proceeding put forward analyses that incorporated such robust analyses that utilized Commission-approved methodologies and figures.

C. Request for relief.

The Order erroneously considers factors such as payback periods, bill savings, and the market as a whole—rather than focusing on behind-the-meter consumption—to justify its full elimination of the Subscription Fee and modification of the BFC. To be clear, there is no penalty on behind-the-meter consumption given that customers maintain the full 1:1 offset utilized in existing NEM programs. Additionally, DESC provided robust, quantitative analyses—based upon its most recent cost of service study—to justify the amounts of such charges. As discussed below, no other party provided such comprehensive quantitative analyses. As such, DESC respectfully requests that the Commission reconsider these findings and properly consider these charges under the express language of Act 62 and within the context of the analyses presented by DESC. Likewise, DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

V. The Order applied the preponderance of the evidence standard unevenly.

As discussed above, DESC provided robust, comprehensive testimony, rooted in a quantitative analysis arising from DESC's most recent cost of service study. However, the Order states that DESC's did not prove by a "preponderance of the evidence that its Solar Choice Proposal complies with Act 62." Order at 70. To be clear, the preponderance of the evidence is a

relatively low threshold when it comes to evidentiary standards, and only requires that the "evidence convinces the fact finder as to its truth." *Pascoe v. Wilson*, 788 S.E.2d 686, 693 (2016). To support this finding, the Commission enumerates discrete items as evidence to support this claim. These items include:

- DESC used a methodology to calculate cost shift that was unreasonable and contrary to numerous requirements of Act 62.
- The BFC and Subscription Fee in DESC's proposal would improperly penalize behind the meter usage in violation of S.C. Code Ann. § 58-40-20(G)(2).
- The [sic] DESC's proposed Solar Choice Metering Tariff would reduce customer bill savings to the point of disrupting the rooftop solar market in South Carolina.
- DESC did not consider whether mitigation measures for existing solar customers, particularly customers who lease solar systems, would be warranted.

Order at 70.

As explained above, DESC used a methodology to calculate the cost shift that actually aligns with the Commission's recommendation, is supported by a cost of service study, and focuses upon shifting existing revenue from one class to another rather than shifting more revenue to DESC. Likewise, the Subscription Fee and BFC do not relate to behind-the-meter consumption whatsoever, and were calculated using DESC's most recent cost of service study.

As for the disruption of the market point cited by the Order, DESC Witness Robinson provided, among other evidence, an expert study in another jurisdiction that utilized real-world evidence and proprietary analytics. Late Filed Exhibit No. 8. That study revealed that in other jurisdictions where solar developers have faced adjustment in rate structures under NEM programs, those developers simply adjust their profit margins in order to provide an economically viable project to the homeowner and continue without disruption Late Filed Exhibit No. 8. Even

aside from this study, DESC Witness Robinson conducted his own, separate analysis which indicated that the Solar Choice Tariffs proposed by DESC present economically viable options to DESC's customers that would allow the solar market within DESC's territory to continue to grow. Tr. 383 – 384.

Lastly, the Order's conclusion that DESC simply did not consider mitigation measures for existing customers is incorrect. In Witness Rooks' pre-filed testimony, he specifically outlined DESC's consideration of whether mitigation measures are warranted for these customers. Tr. 481.5. Witness Rooks explained that "existing data suggests that full payback could be achieved for customers taking service under the Current NEM Program prior to the transition to these Solar Choice Tariffs." *Id*. Accordingly, DESC does not believe any additional mitigation measures are warranted for existing customer-generators." *Id*. Likewise, DESC Witness Everett opined at length during the hearing on DESC's consideration of mitigation measures, and noted that because existing customers could remain on the existing tariffs until at least 2025 and often into 2029, DESC believes that additional mitigation measures are unnecessary. Tr. 283.18 – 284.2. The record reveals that DESC did consider mitigation measures, contrary to the Order's allegation.

On these points, among others, DESC utilized the type of analyses and comprehensive review that it would utilize in a broader rate case by engaging outside experts to develop a ground-up, quantitative analysis upon which to base rates. DESC submitted hundreds of pages of testimony supporting these findings and testified over the course of numerous hours at hearing as to the details and assumptions underlying such analyses. Notably, the South Carolina Office of Regulatory Staff (the "ORS") provided separate expert analysis and testimony that supported

almost all of the components within the Solar Choice Tariffs presented by DESC.[8] Despite this, the Order held that DESC had not convinced the Commission that these matters were true under the preponderance of the evidence standard.

Instead, the Commission largely adopted the intervenors' proposed tariff (the "Intervenor Tariff"). In stark contrast to the testimony and analyses put forward by DESC and the ORS, the Intervenor Tariff principally relied upon alleged benefits that have not been recognized in the state of South Carolina (e.g., decarbonization and societal benefits) in any rate-making proceeding to justify rates that are far removed from the actual cost to serve these NEM customers. Tr. 851 – Tr. 852. The net result is that the cost shift warned of by Act 62 is simply perpetuated. In adopting the Intervenor Tariff, the Order relies on general assertions, such as the following:

- "Witness Beach rejected Witness Everett's testimony that the Joint Solar Choice proposal would harm low-income non-participating DESC customers because when accounting for the full suite of benefits of distributed solar generation, including avoided transmission and distribution costs that would otherwise be passed on to all ratepayers, all ratepayers benefit." Order at 87.
- "In addition, under the Joint Solar Choice Proposal, bill savings for customers who install rooftop solar do not dramatically decrease, as they would under DESC's proposal, providing low- and moderate-income households an opportunity to lower their bills by installing solar (including through a lease)." *Id*.
- "Witness Moore further testified that this proposal gave the Commission 'an

[8] In discussing the proposed Solar Choice Tariffs, ORS Witness Horii noted that the tariffs contain "hallmarks" of an ideal NEM tariff. Tr. 303.4.

> opportunity to approve a tariff with no cost-shift that also meets the other public-interest goals, such as continuing to reward customer efficiency, customer demand-response.'" Order at 88.

These are just a few of the broad conclusory statements that were not supported by the quantitatively-grounded analyses such as those presented by DESC, but were nevertheless relied upon in the Order. As the above quotes show, the Order simply concludes that DESC's analyses do not meet the preponderance of the evidence standard, but that the speculative, conclusory testimony supporting the Intervenor Tariff did surpass such standard. To be clear, although DESC is the applicant in this docket, the same evidentiary standard applies to the intervenors who submitted their own tariff proposal for adoption. This even application of the evidentiary standard is even more critical in this docket given that the intervenors' interests are not aligned with the interests of DESC's approximately 740,000 non-participating customers on this particular issue. Furthermore, in the Generic Docket, the Commission requested a survey of best practices from other jurisdictions, and testimony on that topic indicated other jurisdictions have recently employed more sophisticated ratemaking tools to eliminate cost shift and better protect non-participating customers—including the exact mechanisms utilized in the Solar Choice Tariff. Tr. 235.12 – 235.22. The Order essentially adopts a tariff modeled from the Intervenor Tariff which reflects very few, if any, of these best practices.

The Intervenor Tariff should be judged by the same standard as DESC. However, the Order clearly applies the preponderance of the evidence standard unequally among the parties to the detriment of DESC and its ratepayers. DESC respectfully requests that the Commission reconsider the Intervenor Tariff and the Solar Choice Tariffs under an equal application of the preponderance of the evidence standard. If the Commission's reconsideration determines that the intervenors did

satisfy the preponderance of the evidence standard, DESC respectfully requests that the Commission describe with precision how the intervenors surpassed the evidentiary burden that DESC's voluminous testimony and expert witnesses failed to clear. Likewise, DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

VI. The Order erred in its interpretation of the requirement to eliminate "any" cost shift to the greatest extent practicable.

Act 62 contains an expression of the General Assembly's broad intent when enacting Act 62, as well as separate, specific directives to the Commission to which it must adhere when establishing the Solar Choice Program. However, the Order conflates these two principles which impacts its analysis. As for the General Assembly's intent, it appears within S.C. Code Ann. § 58-40-20(A):

> (A) It is the intent of the General Assembly to:
>
> > (1) build upon the successful deployment of solar generating capacity through Act 236 of 2014 to continue enabling market-driven, private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources;
> >
> > (2) avoid disruption to the growing market for customer-scale distributed energy resources; and
> >
> > (3) require the commission to establish solar choice metering requirements that fairly allocate costs and benefits to eliminate any cost shift or subsidization associated with net metering to the greatest extent practicable.

Subclause (1) and (2) are expressions of the General Assembly's broad intent, while subclause (3) is the only subclause in this section that levies a specific directive to the Commission—"eliminate any cost shift or subsidization associate with net metering to the greatest extent practicable." S.C. Code Ann. § 58-40-20(G) contains additional directives to the Commission that are specific to the

Solar Choice Program. There, the General Assembly re-iterates that the Commission is required to "eliminate any cost shift to the greatest extent practicable . . . while also ensuring access to customer-generator options for customers who choose to enroll" in NEM programs. S.C. Code Ann. § 58-40-20(G)(1). By fulfilling these specific directives levied to the Commission, the Commission will necessarily fulfill the broader intent of the General Assembly expressed in subclause (1) and (2) above. However, the Order treats that expression of intent—which is generally applicable to all of Act 62—on par, or even more importantly, than the specific instructions provided to the Commission when establishing the Solar Choice Program. For example, the Order expressly states that the:

> Commission is directed to 'eliminate any cost shift to the greatest extent practicable' while at the same time . . . avoiding 'disruption to the growing market for customer-scale distributed energy resources,' and continuing market-driven, private investment in DERs across the state by reducing regulatory and administrative burdens to customer installation and utilization of onsite DERs. As such, Act 62 contemplates a framework for the adoption of solar choice tariffs that avoid disruption to the solar market and ensure continued customer access to solar options in a way that align the interests of all customers.
>
> Order at 14.

The Order clearly errs in interpreting the General Assembly's broad intent when enacting Act 62 as equivalent to the specific instruction to eliminate cost shift, which was recited not once, but twice within Act 62. S.C. Code Ann. § 58-40-20(A)(3);S.C. Code Ann. § 58-40-20(G)(1). This approach not only transforms the General Assembly's broad expression of intent into specific Solar-Choice parameters, but it goes one step further to prioritize that intent over the specific instruction to eliminate cost shift by characterizing "to the greatest extent practicable" as a "qualification:"

> Act 62 includes other directives and policy objectives that are expressed without qualification. The inclusion of the phrase 'to the greatest extent practicable' means

> that the Commission may not choose to eliminate any potential cost shift at the expense of other objectives in Act 62.
>
> Order at 17.

By way of example, this logic would mean that a patient receiving instructions from a doctor requiring healthy eating "to the greatest extent practicable" while also seeking some balance by allowing cheat days, would prioritize cheat days over eating healthy because the doctor expressed that instruction "without qualification." This simple hypothetical mirrors the logic employed in the Order and shows the clear error of such reasoning. In fact, if the General Assembly intended for the Commission to treat its intent on par with the Solar-Choice specific instructions within Act 62, it could have repeated that intent in S.C. Code Ann. § 58-40-20(G)—just as it did with the cost shift language. However, the General Assembly did not take that approach. By prioritizing the General Assembly's intent over the specific requirement to eliminate cost shift to the "greatest extent practicable," the Order ignores DESC's deliberate, considered attempt to develop tariffs in compliance with Act 62, and places market-centric goals outside of the stated intent—such as "to continue enabling market-driven, private investment" by "reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources"—above the ratepayer protections specifically placed within Act 62 by the General Assembly. As such, DESC respectfully requests that the Commission reconsider these findings in light of the above analysis. Prioritizing the General Assembly's intent resulted in the Commission rejecting DESC's Solar Choice Tariffs—even though DESC complied with the specific directions of Act 62. Likewise, DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

VII. As discussed above, the Order relied heavily upon certain "benefits" of solar that have not been quantified or recognized by this Commission.

DESC's Solar Choice Tariffs are rooted in principles, methodologies, and cost components that have been accepted or approved by the Commission time and again. Specifically, the current avoided costs utilized for the existing NEM programs contain the costs and benefits that have been recognized and precisely quantified by the Commission. Tr. 235.7 – 235.11. DESC carried those forward in developing the Solar Choice Tariffs, including the avoided cost credit therein—yet, the Order noted on several occasions that DESC did not consider all benefits (including long-term) of customer-generation in developing the Solar Choice Tariffs. Order at 16. However, the Order neither identifies nor quantifies any such benefits with the necessary precision from which to develop rates.

By way of background, Act 62 specifically directed the Commission to "investigate the costs and benefits of the current net energy metering program" in the Generic Docket. S.C. Code Ann. § 58-40-20(C). There is no similar mandate in this docket. In the Generic Docket, the Commission heard voluminous testimony debating whether and to what extent any costs and benefits—other than those 11 components of the current NEM methodology—could be quantified with sufficient precision to impact NEM rates. However, at the conclusion of the Commission's investigation in that docket, it issued a Directive on April 28, 2021 (the "Generic Directive") indicating that the Commission "must continue to better define benefits – both the components and the methodology for determining costs – whether they be economic, health or other societal benefits." Generic Directive at 3. No final order in the Generic Docket was issued prior to the Order, and DESC is unaware of any efforts by the Commission to better define those costs and benefits or any additional guidance issued by the Commission as to how such costs and benefits should be calculated. Yet, the Order relies heavily on those unsubstantiated benefits to implement

the Intervenor Tariff.[9] For example, the Order notes that DESC Witness Everett's methodology for calculating cost shift "is unreasonable because [it] . . . does not consider all of the benefits of customer-generated solar." Order at 24. Likewise, the Order opines that "not considering all benefits of customer generated solar [is] inconsistent with Act 62." Order at 63. In rejecting the Solar Choice Tariffs, the Order further alleges that DESC did not consider "long-term benefits." Order at 16. Put simply, the Order injects speculative, un-recognized, and ill-defined (as admitted by the Commission) benefits into a rate-making proceeding which necessitates just the opposite—a quantifiable, evidence-based, and replicable approach such as that taken by DESC. As such, DESC respectfully requests that the Commission reconsider these findings given that the Intervenor Tariff is primarily supported by benefits that have not been accurately quantified or previously recognized by this Commission. If the Commission determines that such benefits are properly included in calculating rates for NEM programs, DESC respectfully requests that the Commission clarify the specific values assigned to each component with the same precision as the current 11 component NEM methodology. This precision is necessary because DESC must utilize such components going forward when setting rates. Likewise, DESC requests a re-hearing on this issue if the Commission deems such re-hearing necessary to further understand this issue.

[9] For example, Alder Energy did not provide any quantitative analysis of note, but offered testimony in support of the Intervenor Tariff based upon "boots-on-the-ground experience."

CONCLUSION

For the reasons set forth above, DESC respectfully requests that the Commission reconsider, rehear, or clarify these items in accordance with the relief requested herein.

Respectfully submitted,

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June 8, 2021

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2020-229-E

IN RE:

Dominion Energy South Carolina, Incorporated's Establishment of a Solar Choice Metering Tariff Pursuant to S.C. Code Ann. Section 58-40-20 (See Docket No. 2019-182-E)	)))))	**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day copies of **Dominion Energy South Carolina, Inc.'s Petition for Rehearing and/or Reconsideration and for Clarification** to the persons named below at the addresses set forth via electronic mail:

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This 8th day of June 2021